APPENDIX

UNITED STATES,
DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1941.

ORDER No. 1610.

INSTRUCTIONS GOVERNING THE APPEARANCE AND TESTIMONY OF EMPLOYEES AS WITNESSES

I. *Voluntary Appearance.*—Employees of the Department shall not appear voluntarily to testify in any judicial proceeding before any court or other agency or officer authorized to conduct such proceeding where (a) the giving of the evidence sought to be obtained from the employee would be prejudicial to the interests of the Government, or (b) the absence of the employee from duty would be detrimental to the service.

A determination as to whether or not the giving of the evidence sought would be prejudicial to the interests of the Government must be made on the facts in each instance. Such determination shall be made only with the written approval of the head or acting head of the bureau or office concerned, and where the subject of the evidence involves more than one bureau or office of the Department, the determination made by the head or acting head of the bureau or office shall be submitted by him for review by the Secretary.

A determination as to whether the absence of an employee from duty would be detrimental to

the service shall be made as in other cases of leave from duty.

II. *Appearance Pursuant to Process.*—An employee compelled by the process of a court, or other agency or officer having power to compel the attendance of witnesses and having jurisdiction of the employee, to attend a judicial proceeding as a witness shall immediately notify the head or acting head of the bureau or office concerned. Insofar as the nature of the evidence to be required of the employee may be ascertained, a determination as to whether or not the giving of such evidence would be prejudicial to the interests of the Government shall be made as provided in cases of voluntary appearance and shall be similarly subject to approval and review.

The production of records of the Department in response to a subpoena duces tecum or other equivalent process, and the giving of oral evidence as to the contents of such records, shall also be governed by this instruction.

III. *Impartiality.*—In any instance where the giving of evidence is permitted pursuant to these instructions or required by the court or officer in charge of the proceedings, the employee shall at all times observe the strictest impartiality with respect to the interests of parties to the controversy: Provided, that this instruction shall not affect any proper conduct of an employee in a proceeding to which he is a party.

IV. *Employees to be Held Responsible for Obtaining Permission from their Bureaus or Offices.*—Any employee who has been requested to attend voluntarily a judicial proceeding as a

witness in a case dealing with matters connected with the business or records of the Government, or any employee who has been compelled by process to attend such a judicial proceeding as a witness will be held responsible for employing every reasonable means of ascertaining the nature of the evidence to be required and of notifying the head or acting head of the bureau or office concerned in order that a written determination may be made in advance as provided by these instructions.

In any instance where it is impossible to obtain such a written determination in advance, the employee will ask the Court to postpone the taking of his testimony on the ground that the regulations of the Department do not permit him to testify on matters pertaining to the official work of his bureau or office without his obtaining in advance the consent of the head or acting head thereof and the employee shall inform the Court that he is taking immediate steps to communicate with his superiors in order to obtain instructions. The employee shall then communicate with the head or acting head of his bureau or office, by telegraph, and ask for a telegraphic determination. If the Court should decide that the employee must testify before a telegraphic reply can be received, the employee shall use his own judgment with respect to the giving of evidence, having due regard to what, in his best judgment, the interests of the Government require.

An employee who is requested to testify in such a judicial proceeding, either on a voluntary or on a process basis, on a subject with which

he is not thoroughly familiar, should so advise the person requesting his testimony and suggest that such person communicate with the head of the employee's bureau or office in order to ascertain the name of an employee who is qualified to testify.

V. *Claiming Privilege.*—In any instance where an employee attends as a witness and evidence is sought to be obtained which would be prejudicial to the interests of the Government, the employee himself must, at the outset of his examination and before answering any questions, claim a privilege on that ground and advise the court or other officer in charge that he must decline to testify. The employee shall have with him and offer to the Court or other officer a copy of these instructions and, in cases where a prior determination has been made, a written original of such determination.

In cases where a prior determination has been made to the effect that the evidence sought to be obtained is not prejudicial to the interests of the Government but in the course of the examination the employee is asked a question, or questions, which in his judgment is prejudicial to the Government's interests, the employee shall claim a privilege on that ground and advise the Court or other officer that under the regulations of his Department he must decline to testify, at least until he can obtain a written determination from the head of his bureau or office.

HAROLD L. ICKES,
Secretary of the Interior.

In the United States Circuit Court of Appeals
For the Tenth Circuit

No. 2716

UNITED STATES OF AMERICA, APPELLANT

v.

FANNIE E. WILLIAMS, APPELLEE

MEMORANDUM

Pursuant to the permission granted by the Court on oral argument, there are submitted herewith one certified and three uncertified copies of the trial brief filed by the Government in the district court below.

These copies of the trial brief are filed in support of the statement of the Government on oral argument that the trial court's Conclusion of Law No. III (Record 31–32) to the effect that there are "850 titles like that of plaintiff" is based on a mistaken reading of the trial brief. The last paragraph of the trial brief and Exhibits C and D of the trial brief make clear that there were executed in all 850 deeds on the Carney-Lacher form, not that there were executed 850 unapproved deeds by the grantees. The word "cases" used in Exhibits C and D does not refer to cases in litigation but refers to cases in the administrative files of the Five Tribes Agency.

In accordance with the request of the Court for a memorandum of the available data concerning the status of the titles, the following is submitted:

Of the 850 Carney-Lacher deeds the Five Tribes Agency has caused title to be examined in 295 cases. The results of the examination are tabulated as follows:

Sold with the approval of the Department of the Interior or of the County Court	67	
Sold for taxes	63	
Owned by grantees	33	
		163
Sold by grantees without approval	118	
Sold by heirs of grantee[1]	11	
Sold by resale tax deed	3	
		132
Total		295

In support of this tabulation there is submitted herewith a copy of a letter dated September 4, 1943, from A. M. Landman, Superintendent for the Five Civilized Tribes, to the Secretary of the Interior.

A copy of this memorandum and its exhibits has been furnished to the Clerk for transmittal to counsel for appellee.

Respectfully,

MARVIN J. SONOSKY,
Attorney for the United States,
Appellant.

I. L. M.—Tax. Div.
BFS–SS 9–4–43.
Re: Information regarding restricted land upon which restrictions presumably had expired.
CC—Marvin Sonosky, C/O Frederick Kirgis, 1715 1st Nat'l Bldg., Denver 2, Colorado.

[1] Of the eleven sold by the heirs, eight were full-blood, one 11/16th blood, and in two instances the quantum of Indian blood has not been determined.

SEPTEMBER 4, 1943.

THE HONORABLE THE SECRETARY
OF THE INTERIOR,
Washington, D. C.
(Attention: Mr. W. H. Flanery.)

DEAR SIR: Further reference is had to your wire of September 3, 1943, asking for additional information regarding purchased land upon which restrictions presumably had expired April 26, 1931.

There are 866 of these cases which have been partially checked.

Take-offs have been requested from District Agents, and 295 cases have been completely checked with the following results:

132 cases were turned to the Probate Division to bring suit to recover land; 67 have been sold by approval of the County Courts or the Department; 63 have been sold at resale for taxes assessed prior to 1937; 33 are still owned by grantees.

Of the 132 cases turned to the Probate Division 118 were sold by the grantees, 11 by heirs of grantees, and 3 by resale. The conveyances made by the heirs were as follows:

Of the 11 sold by the heirs, 8 were full-bloods; 1, $^{11}/_{16}$ths, sold in 1940; and in 2 cases quantum of Indian blood has not been determined.

The conveyances were made in years as follows:

65 sold in 1931, 19 sold in 1932, 10 sold in 1933, 3 sold in 1934, 6 sold in 1935, 9 sold in 1936, 5 sold in 1937, 2 sold in 1938, 4 sold in 1939, 2 sold in 1940, 3 sold in 1941, 2 sold in 1942, and 2 sold prior to 1931 without approval.

When the decision in the *West* v. *Wicked* case was attacked in other litigation, checking of these cases was stopped pending a further determination of the courts of this question.

Respectfully,

(S) A. M. LANDMAN,
Superintendent.

U. S. GOVERNMENT PRINTING OFFICE: 1944